

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of
OSAN and GARO ANADOLIAN.

B179201

(Super. Ct. No. BD 391738)

OSAN ANADOLIAN,

Appellant,

v.

GARO ANADOLIAN;
ANTRANIK ANADOLIAN, as Trustee, etc.,

Respondents.

APPEAL from an order of the Superior Court of Los Angeles County.

Reva G. Goetz, Commissioner. Reversed with directions.

Lipton & Margolin and Hugh A. Lipton for Appellant.

Klahs & Hedwall and Donald R. Klahs for Respondent Garo Anadolian.

Poole & Shaffery, David S. Poole and Brian E. Koegle for Respondent Antranik Anadolian.

In this divorce action, we conclude that the family law court erroneously dismissed the wife's quiet title action against a third party. We reverse the order of dismissal and remand with directions.

BACKGROUND

Family Code section 2021¹ permits the discretionary joinder in a divorce proceeding of third parties who possess, control, or claim to own any property subject to the family law court's jurisdiction. In this divorce case, the wife, appellant Osan Anadolian, contends that her husband, respondent Garo Anadolian, wrongfully transferred property belonging to the community estate -- a home in La Crescenta (the Hawkrigde Property) and commercial property in Fresno (the Shaw Property) -- to his brother, respondent Antranik Anadolian, as trustee for the Anadolian Trust and the Anadolian Family Trust. (Given that the parties share the same last name, we will refer to them by first names with no disrespect intended.)

Osan filed three separate and concurrent motions to join Antranik and the two trusts under section 2021 and, as required by rule 5.156(a) of the California Rules of Court, attached to her motions a proposed complaint against Antranik and the two trusts to quiet title to the Hawkrigde and Shaw Properties. In the proposed complaint, Osan alleged that Antranik is the trustee of the trusts to which Garo wrongfully transferred both properties "in an attempt to deprive [Osan] of her community share of the real property." Osan alleged that Antranik and the trusts "have no right, title, estate, lien, or interest whatever" in the two properties.

Over Garo's opposition, the family law court by order dated January 27, 2004, granted the joinder of Antranik as Trustee of the Anadolian Family Trust, denied the joinder of the trusts, and directed that Osan's proposed quiet title complaint be filed. The order lacked clarity because, on the one hand, it could be read as allowing Osan to litigate only her interest in the Hawkrigde Property because only the Hawkrigde Property was

¹ All further statutory references are to the Family Code.

mentioned in the successful motion for joinder of Antranik as Trustee of the Anadolian Family Trust or, on the other hand, it could be read as allowing Osan to litigate her interest in both the Hawkrige and Shaw Properties because both properties were mentioned in the proposed complaint that Osan was granted permission to file.

Osan, who interpreted the order to mean that she could pursue her quiet title action against Antranik as trustee of both trusts but not against the trusts themselves, filed the proposed complaint with a modified caption naming as defendant, “Antranik Anadolian as Trustee for Anadolian Trust.” As filed, the body of the quiet title complaint, which remained identical to that of the proposed complaint, continued to allege that Antranik is the trustee of both trusts and that Garo had wrongfully transferred ownership of both properties to Antranik and the trusts “in an attempt to deprive [Osan] of her community share of the real property.” The quiet title complaint also alleged that Antranik and the trusts “have no right, title, estate, lien, or interest whatever” in either property.

Antranik moved to strike the quiet title complaint in whole or in part. In support of striking the complaint in part, Antranik argued that references to the Shaw Property must be stricken because the Shaw Property was mentioned only in the motion for joinder of the Anadolian Trust, which motion was *denied*, and not in the motion for joinder of Antranik as Trustee of the Anadolian Trust, which was the only motion granted. In support of striking the entire complaint, Antranik argued that the complaint failed to comply with the requirements that the complaint: (1) must be verified (Code Civ. Proc., § 761.020); (2) must include the legal description and street address of the disputed real property (Code Civ. Proc., § 761.020, subd. (a)); (3) must designate the title as to which a determination is sought and the basis for the plaintiff’s claim to that title (Code Civ. Proc., § 761.020, subd. (b)); (4) must allege that the plaintiff “was seized or possessed of the property in question, within five years before the commencement of the action” (Code Civ. Proc., § 318); and (5) must include in the caption the names of all of the parties being sued (Code Civ. Proc., §§ 422.40, 762.010). In addition, Antranik argued that to the extent Osan was attempting to quiet title to the disputed properties as against the trusts, the complaint is inappropriate in that trusts cannot be parties to an action.

In opposition to the motion to strike, Osan argued against striking the complaint's references to the Shaw Property because nothing in the record or in the court's January 27, 2004 order on the motions for joinder prohibited her from pursuing her quiet title action as to the Shaw Property. Osan pointed out that the January 27 order specifically had directed her to file the proposed quiet title complaint alleging an ownership interest in *both* the Shaw and Hawkridge Properties. As for the other pleading defects alleged in the motion to strike, Osan contended that she could cure them and therefore requested leave to amend.

In its minute order dated September 10, 2004, the family law court granted the motion to strike the entire complaint "[d]ue to the procedural defects noted in the pleadings" and dismissed the complaint with prejudice as to the Shaw property and without prejudice as to the Hawkridge property. Osan has appealed from the order of dismissal.

DISCUSSION

I.

The September 10 Order of Dismissal is Appealable

Antranik contends that because an order striking a complaint is not an appealable order, the appeal must be dismissed.² Antranik argues that the September 10 order is not a final judgment because it "left open the Appellant's pursuit of her claim with regard to the Hawkridge Property. Appellant chose not to file an amended pleading and did not allow the matter to proceed to judgment. She is continuing to pursue claims against the Respondent in the instant action below (and in her new quiet title action). Accordingly, there is no basis for an appeal from the Minute Order." We disagree.

The September 10 order did not merely grant Antranik's motion to strike, it dismissed the entire complaint and disposed of all issues between Osan and Antranik in this action and, therefore, constituted a final appealable judgment. (Code Civ. Proc., §

² Garo, who was not a party to the motion to strike, has filed a joinder to Antranik's respondent's brief.

904.1, subd. (a)(1).) Antranik's reliance upon *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 207 is misplaced because in that case, the order dismissing the county's cross-complaint was not a final judgment in that it failed to dispose of the identical claims raised by the county's auditor in a complaint in intervention filed in the *same* action. In this case, although Antranik states that Osan "is continuing to pursue claims against the Respondent in the instant action below," we know of no other pending action between Osan and Antranik in this divorce proceeding. Even if, as Antranik contends, Osan has filed a separate quiet title action against Antranik outside of the divorce proceeding, the existence of that separate action would have no effect on the finality of the judgment dismissing the only action between Osan and Antranik in this divorce proceeding.³

II.

The Dismissal Constituted an Abuse of Discretion

The joinder in a divorce action of a third party who possesses, controls, or claims an interest in the couple's community property is permissive, not mandatory, and the family law court's ruling on a motion for joinder is reviewed on appeal for an abuse of discretion. (*Schnabel v. Superior Court* (1994) 30 Cal.App.4th 758, 762-763.) Given that the family law court's exercise of discretion must be reasonable, however, if joinder is the only reasonable alternative, such as where the third party is an indispensable party to the proceedings and his presence is necessary for determining not only community property but also spousal support and attorney fee issues, the denial of a motion for joinder can constitute an abuse of discretion. (*Id.* at pp. 763-765.)

In this case, Osan contends that the January 27, 2004 order on the joinder motions contained nothing to prohibit her from adjudicating her interest in the Shaw Property and that her complaint, which she filed at the court's direction, clearly alleged that she has a

³ Antranik has asked us to take judicial notice of the existence of the other action, *Osan Anadolian v. Garo Anadolian* (L.A. County Super. Ct., No. BC 330444), filed March 17, 2005. As the other action is not relevant to this appeal, the request is denied.

community property interest in both the Shaw and Hawkrigde Properties. We conclude that joinder of Antranik for purposes of litigating both trusts' interests in the two properties was the most reasonable course to resolve the ownership of the properties. (See *Elms v. Elms* (1935) 4 Cal.2d 681, 683-684 [joinder of third party claimants is necessary to resolve competing claims to property alleged to be community property; adjudicating marital property rights without determining the third-party's claim may result in an uneven division of community property]; *Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1450-1452.)

The reporter's transcript for the hearing on the joinder motions is confusing and fails to support Antranik's position that the trial court properly excluded the Shaw Property from the quiet title action. Antranik relies upon references in the reporter's transcript to Osan's failure to provide sufficient *evidence*, such as deeds of title, to prove the existence of her community property interest in the Shaw Property. There is nothing in section 2021 or the applicable Rules of Court or the case law interpreting section 2021, however, to support Antranik's theory that Osan was required to produce *evidence* to establish her claim of a community property interest in the Shaw Property in order to prevail on her motion for joinder of a third party. Just as in the context of demurrers the trial court must assume the truth of properly pleaded factual allegations in the complaint (*First Nationwide Savings v. Perry* (1992) 11 Cal.App.4th 1657, 1662), the family law court was required to assume the truth of the factual allegations in Osan's complaint in determining her motions for joinder. Accordingly, the court should have accepted as true the complaint's factual allegations that Antranik is the trustee of the trusts to which Garo wrongfully transferred the Shaw and Hawkrigde Properties "in an attempt to deprive [Osan] of her community share of the real property[.]" The court was not authorized, as Antranik erroneously argues, to adjudicate, in the context of deciding whether to allow the joinder of third parties, the sufficiency of the evidence to show Osan's community property interest in the Shaw Property. That is a factual question that must be determined later.

We agree with Osan that because the pleading defects relied upon in the dismissal of her complaint are matters that may be remedied by amendment, the family law court abused its discretion in striking her complaint without leave to amend.

DISPOSITION

The order of dismissal is reversed. The matter is remanded with directions to grant Osan a reasonable period within which to amend her quiet title complaint against Antranik as trustee of both trusts, with regard to both the Shaw and HawkrIDGE Properties. Osan is entitled to costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

SPENCER, P.J.

MALLANO, J.